

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2592 of 2007()

PETITIONER: ACCUSED 1 & 2

1. N.K.JAFFAR, S/O.N.K.MEHAMOOD,
ENKEY COTTAGE, IRINGAL, MOORAD, VADAKARA.
2. ABDUL RASHID, S/O.POCKER,
CHERIYAKIZHAKKAYIL HOUSE, THURAYOOR,
PAYYOLI.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT AND STATE

1. S.I.OF POLICE, FEROKE POLICE STATION.
2. JULIUS MIRSHAD,
S/O.P.MOHANAN, POOKKOTT HOUSE,
VATTOLI P.O., KAKKATTIL VIA, VADAKARA TALUK.

BY ADV. SRI.CIBI THOMAS
PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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Crl.M.C. No.2592 Of 2007
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Dated this the 16th day of August, 2007

ORDER

Petitioners face indictment in a prosecution for the offences punishable, inter alia, under Sections 341, 323 and 324 read with 149 I.P.C. Of course the allegations under Sec.143, 147 and 148 have also been raised. Investigation is complete. Final report has already been filed. Committal court has taken cognizance and registered the committal proceedings. The petitioners were not available for arrest, hence the case against them was split up. Trial against the co-accused continued. They were found not guilty and acquitted. In fact the complainant did not raise any grievance against them, it is submitted. The case against the petitioners was split up and later transferred to the list of long pending cases. The learned Magistrate has issued coercive processes against the petitioners. The petitioners apprehend imminent arrest. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The absence of the petitioners earlier was not wilful. The petitioners are willing to surrender before the learned Magistrate and seek regular bail. It is further submitted that the complainant has compounded all the offences alleged against the petitioners also. The offences under Secs.143,147 and 148 are

non compoundable.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

3. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

4. The learned counsel for the petitioners submits that the learned Magistrate may be directed while reading over the particulars of the offences to take note of the fact that no charges under Sec.143,147 and 148 are liable to be raised and other offences are compoundable.

5. It is further submitted that there may be direction for expeditious disposal of the case, inasmuch as the petitioners are employed abroad and have to go back to their place of employment.

6. If is for the petitioners to make such requests before the learned Magistrate and the learned Magistrate, needless to say, must consider such request and pass orders expeditiously.

(R.BASANT, JUDGE)

sj